

ATTACHMENT C (Proposed Amendments to Rule 2302 – Redline Version)

Rule 2302. DISCLOSURE OF INFORMATION

(a) Except as otherwise provided by law or these rules, information concerning inquiries, complaints or investigations is confidential. There is no duty of confidentiality with respect to non-members; however, the Chief Trial Counsel or designees may assert confidentiality with respect to inquiries, complaints, or investigations regarding non-members, if, in the discretion of the Chief Trial Counsel or designees, that is necessary to protect members of the public.

(b) A member whose conduct is the subject of an inquiry, complaint or investigation may waive confidentiality.

(c) Notwithstanding the provisions of paragraph (b), the Chief Trial Counsel or designee ~~or the President~~, may decline to waive confidentiality regarding an inquiry, complaint or investigation, if it is determined that an ongoing investigation may be substantially prejudiced by a public disclosure before the filing of a notice of disciplinary charges.

(d) (1) Notwithstanding paragraph (a) and without violating the duty of confidentiality or waiving confidentiality for other purposes, the Chief Trial Counsel or designee ~~or the President of the State Bar~~, after private notice to the member, may disclose documents or information concerning a complaint(s) or investigation(s) for the protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality, including but not limited to the following circumstances:

(A) A member has caused, or is likely to cause, harm to client(s), the public, or to the administration of justice, such that the public or specific individuals should be advised of the nature of the allegations. The following additional factors shall be considered in making this determination:

- (i) The maintenance of public confidence in the discipline system's exercise of self-regulation;
- (ii) The member's current membership status;
- (iii) The record of prior discipline of the member;
- (iv) The potential for the imposition of a substantial disciplinary sanction;
- (v) The existence of any other public matters;
- (vi) The status of the complaint or investigation;
- (vii) The waiver of confidentiality by the member;
- (viii) The gravity of the underlying allegations; and
- (ix) The member's cooperation with the State Bar.

(B) A member has committed criminal acts or is under investigation by law enforcement authorities;

(C) A member is under investigation by a regulatory or licensing agency, or has committed acts or made omissions which may reasonably result in investigation by a regulatory or licensing agency;

(D) The member is the subject of multiple complaints and the Office of the Chief Trial Counsel has determined not to pursue all of the complaints. The Office of the Chief Trial Counsel may inform complainants whose allegations have not been pursued of the status of the other investigations or the manner in which the other complaint(s) against the member have been resolved, e. g., by directional letter, warning letter, admonition, agreement in lieu of discipline, or private reproof; or

(2) If the Chief Trial Counsel, for any reason, declines to exercise the authority provided by paragraph (d)(1), or disqualifies himself or herself from acting under paragraph (d)(1), he or she shall appoint a designee to act in his or her place.

(3) ~~After a waiver of confidentiality pursuant to paragraph (d)(1)(A) above, the~~ The Chief Trial Counsel or designee, may define the scope of information ~~disseminated~~ disclosed and may limit the ~~disclosure dissemination~~ of information pursuant to paragraph (d)(1)(A), above, to specified individuals or entities.

(4) Except as otherwise provided by law or these rules, if the Chief Trial Counsel or designee ~~or the President waives confidentiality~~ discloses documents or information pursuant to paragraph (d)(1) through (d)(3), the Chief Trial Counsel, ~~the President~~ or designee may issue, if appropriate, one or more public announcements and may disclose information concerning a complaint(s) or investigation(s) involving a member(s), which includes a statement of the status or disposition of the complaint(s) or investigation(s); clarifying the procedures involved; and defending the right of the member(s) to a fair hearing on the allegations of misconduct.

(5) The Chief Trial Counsel, ~~the President~~ or designee may issue, if appropriate, one or more public announcements and may disclose information concerning a complaint(s) or investigation(s) involving a non-member(s) when such disclosure would serve to protect the public, including, but not limited to, protecting the public from an individual(s) who has engaged in the unauthorized practice of law.

(e) Notwithstanding the provisions of paragraph (d), and without ~~waiving violating the duty of confidentiality, confidentiality or waiving confidentiality for other purposes,~~ the Chief Trial Counsel, in the exercise of discretion, may disclose documents and information concerning disciplinary inquiries, complaints and investigations to the following individuals or entities:

- (1) To employees of the State Bar Office of the Chief Trial Counsel, the State Bar Office of General Counsel or any Special Deputy Trial Counsel;
- (2) To members of the Judicial Nominees Evaluation Commission or Review Committee as to matters concerning nominees in any jurisdiction;
- (3) To witnesses or potential witnesses in conjunction with an inquiry, complaint, investigation, or proceeding;
- (4) To other governmental agencies responsible for the enforcement of civil or criminal laws, including but not limited to information within the definitions set forth in Business and Professions Code sections 6043.5 and 6044.5;
- (5) To agencies and other jurisdictions responsible for professional licensing;
- (6) To the complainant or lawful designee;
- (7) To the member(s) who is (are) the subject of the inquiry, complaint or investigation or their counsel of record, if any;
- (8) To judges of the State Bar Court; or
- (9) To any other person or entity to the extent that such disclosure is authorized by Business and Professions Code sections 6094.5(b), 6086.14 or other statutory provision or any other law.
- (10) To employees of a language interpretation or language translation company under contract with the State Bar to provide language translation or language interpretation services. Any contract between the State Bar and a language interpretation or language translation company shall include a confidentiality clause or non-disclosure agreement.